

1 evidence.)

2 JUDGE STEINBERG: Now, is Mr. Jones available for
3 cross?

4 MR. HILL: He is available for cross-examination.

5 JUDGE STEINBERG: Okay, you are going to cross,
6 Mr. De Jesus?

7 MR. HILL: One procedural matter, if I may
8 interrupt. This is a witness that has been identified by
9 the Bureau as a direct case adverse witness. So my
10 understanding is we will do cross-examination, redirect, and
11 then the Bureau will start with its direct examination.

12 JUDGE STEINBERG: I thought they were going to
13 roll it all into one.

14 MR. HILL: Roll it all into one?

15 JUDGE STEINBERG: In which case, I would restrict
16 you leading. I mean, because -- although if he's a hostile
17 witness, you can lead anyway.

18 MS. LANCASTER: He's an adverse witness, Your
19 Honor.

20 JUDGE STEINBERG: Yes, I forgot about that part.
21 It's been a long time. At least I didn't have to be
22 reminded.

23 (Laughter.)

24 MR. HILL: And Mr. Evans has only cross-
25 examination.

1 JUDGE STEINBERG: Yes, but he can cross on
2 anything.

- 3 MR. HILL: Almost.

4 JUDGE STEINBERG: Why don't you ro it nto one.
5 I think it would be much more efficient. That way there **is**
6 a flow.

7 MR. HILL: Just so we understand the process.

8 JUDGE STEINBERG: Yes. And then you can redirect
9 and cross, you can do the same thing. Now you have to
10 understand, Mr. Hill, if you get into direct, then he can
11 lead too even though this is his own client because you have
12 got him on direct, and he can cross, and he can lead.

13 MR. HILL: Okay.

14 JUDGE STEINBERG: So however you want to do it.
15 And Mr. Evans, he can lead like crazy.

16 (Laughter.)

17 JUDGE STEINBERG: Okay, we will go till four. **So**
18 you know, around four o'clock, you know, find a nice
19 breaking point.

20 MR. DE JESUS: Okay.

21 JUDGE STEINBERG: I can be a little before,
22 slightly after.

23 CROSS-EXAMINATION

24 BY MR. DE JESUS:

25 Q Hello again, **Mr.** Jones.

1 You testified on direct that you had occasion to
2 review several documents and develop a chronology of the
3 events that took place, and in part, that's why you changed
4 your statement on page 8?

5 A Yes, sir.

6 Q Okay. Now, in preparing for testimony today, what
7 documents do you recall reviewing?

8 A Numerous documents that I had. Part of it was the
9 ALJ opinion in Algreg.

10 Q If I may, when you say the administrative law
11 judge's opinion, are you referring to the -- did you have
12 occasion to review the Alee Cellular Communications case in
13 Alee, the memorandum, opinion and order, hearing designation
14 order?

15 A I have seen that, sir.

16 JUDGE STEINBERG: You mean the HDO in this case?

17 MR. DE JESUS: Yes.

18 JUDGE STEINBERG: Give him a clean copy. I don't
19 want the witness to see copies with handwriting and
20 highlighting and notes. I don't think that's appropriate.

21 MR. EVANS: I have got a copy that has coffee
22 stains on it.

23 JUDGE STEINBERG: Coffee stains are fine.

24 (Laughter.)

25 JUDGE STEINBERG: That's shaped like asterisks.

1 (Laughter.)

2 BY MR. DE JESUS:

- 3 Q Now your response, I believe, was yes?

4 A This? No, I did not say yes.

5 JUDGE STEINBERG: I will tell **you** that --

6 THE WITNESS: This particular document doesn't
7 look familiar, but what I read was in columnar, very narrow
8 columnar copy that I had. So it wasn't laid out similar to
9 this. So without reading all of this, I wouldn't be able to
10 answer that.

11 Q Okay.

12 JUDGE STEINBERG: Let me see.

13 THE WITNESS: All right?

14 JUDGE STEINBERG: Let me just see. This is the
15 Commission order that set this case that we are currently
16 doing now for hearing.

17 THE WITNESS: Okay. What I am referring to is, I
18 believe, the initial order that came out from the initial
19 ALJ.

20 JUDGE STEINBERG: Judge Miller?

21 THE WITNESS: Judge Miller. I read that document
22 as well as several other documents that were provided to the
23 FCC on your document request, and just got the time line in
24 my mind a little clearer.

25 BY MR. DE JESUS:

1 Q Now in reference to the time line that you have
2 indicated, I am just going to go through some dates and you
- 3 tell me if they correspond to your understanding of the time
4 line.

5 A I'll do my best, sir.

6 Q Okay. On August 12, 1988, Alee files an
7 application.

8 **JUDGE STEINBERG:** Specify which one.

9 BY MR. DE JESUS:

10 Q And that would be the construction permit
11 application for New Mexico 3; is that correct, sir or does
12 that correspond --

13 A In August of '88, that sounds in line.

14 Q Okay. Now, on September 23, 1988, the transfer of
15 interest goes from Sharifan to Sharif; Sharifan being the
16 alien, and Sharif being the U.S. citizen.

17 A I think it's Riahi.

18 Q Riahi.

19 A Riahi is the name.

20 Q I think I had this probl m last time. I s
21 pronouncing the name Riahi.

22 A Riahi.

23 Q Okay. I will just call him Mr. R.

24 Now, on August 1989, Alee winds up getting the
25 construction permit?

1 A That sounds about right. That is right.

2 Q Then on January 1990, I believe the -- is the
- 3 executive committee formed at that point or was it formed
4 prior?

5 A The executive committee was formed, I believe, in
6 December of '88, because that is when our -- that was our
7 first meeting in Allan Kane's office, if I am not mistaken.

8 Q Okay.

9 A I think our -- we were successful -- we were a
10 selectee during December of '88, if I am not mistaken.

11 Q Okay.

12 A All right? So then on 12 of '88, we had our first
13 meeting.

14 Q Okay.

15 A In the office of Allan Kane.

16 Q Okay, now, in 1988, when the executive committee
17 is formed, who was part of the executive committee?

18 A The executive committee would have consisted of
19 Bob Bernstein, myself. It would have been, I think,
20 originally John Dauphin was proposed, and also Becky Jo
21 Clark was listed as an alternate

22 Q Okay. Now, moving to January 1990.

23 A Yes, sir.

- 24 Q I believe you testified in your written statement
25 that in January of 1990, the executive committee took

1 control of the partnership and dismissed Allan Kane as
2 manager.

3 A That is correct.

4 Q Okay. And I assume you also -- at that point had
5 you already also dismissed Franklin or was he dismissed
6 prior to that date?

7 A I am unclear as to the exact date when Franklin
8 was terminated, but it was around this same time that we had
9 hired Hopkins & Sutter to be our attorneys, in which case
10 Franklin was no longer needed.

11 Q So in that case, if I understand your testimony,
12 then Franklin would have been dismissed some time shortly
13 prior to January 1990?

14 A In that ball park, yes. It would have been either
15 the late fall or up to that time.

16 Q Okay. Now, when did it come to your attention,
17 and again I believe the name is Sharifan. If I mispronounce
18 it --

19 A That's correct.

20 Q When did it come to your attention that Sharifan
21 was an alien?

22 A The first time that Sharifan's name was associated
23 with being the alien was when I received a phone call from
24 Mr. Bernstein in approximately -- it would be the spring of
25 1990, approximately March. It was when our new attorneys

1 had discovered the issue, had made Mr. Bernstein aware of
2 it. Mr. Bernstein called me because after terminating Mr
- 3 Kane in January of '90, I took over the financial
4 responsibilities, and we had a capital call shortly
5 thereafter, and that capital call, it was done based upon
6 the information provided by Allan Kane to my office.

7 Q Okay.

8 A And Sharifan was erroneously included in that, and
9 I cut a check at that time to reimburse him because he was
10 not a partner.

11 Q Okay. Now in your statement, the one that you
12 corrected, on page 8 you say, "In late 1989, largely as a
13 result of Sharifan's foreign partnership matter, the
14 partnership became convinced," and then it goes on.

15 Q I believe I corrected that, sir.

16 Q Yes. And my question **is**, what led you to believe
17 that originally when you first sat down and prepared this?

18 A Other than the fact that that alien issue was one
19 of the major issues, I don't recall.

20 Q Okay.

21 JUDGE STEINBERG: Let me ask. On Exhibit 1?

22 THE WITNESS: Yes, sir.

23 JUDGE STEINBERG: Are these your words? I'm
24 talking about -- not the question, but the answers, are
25 these your words or are these words that your attorneys

1 prepared for you for you to review and check and sign?

2 THE WITNESS: No, these are my words.

3 JUDGE STEINBERG: Okay, so you sat down and wrote
4 the answers --

5 THE WITNESS: Absolutely.

6 JUDGE STEINBERG: -- to the questions they
7 provided?

8 THE WITNESS: Absolutely.

9 BY MR. DE JESUS:

10 Q Now, then I believe some time n April 30, 990,
11 Alee discloses to the Commission Sharifan's alien, I guess,
12 character, correct?

13 A They disclosed at that time that we had had an
14 alien in the partnership, yes.

15 MR. EVANS: Could I ask what was that date? Was
16 it April?

17 JUDGE STEINBERG: April '90. Isn't that the date
18 that Mr. De Jesus said?

19 MR. DE JESUS: April 30, 1990.

20 MR. EVANS: I thought he had said August. Thank
21 you.

22 BY MR. DE JESUS:

23 Q So I believe it's your testimony now that the time
24 period that lapsed from the time you were aware that
25 Sharifan was an alien to the time that you notified the

1 Federal Communications Commission would have been how much
2 time now, sir?

3 A From the time that I became aware -- that I became
4 aware he was an alien?

5 Q Yes, to the time that --

6 A I would have to go back to the check that I wrote
7 out, because that was the first time that I became aware of
8 that, okay. And I don't know what the date of that check
9 was. I know it was handed to me at one time in the past as
10 an exhibit. I don't know whether it was during our
11 deposition or not. But there was a check that was issued
12 from my office back to Sharifan.

13 MR. DE JESUS: Bear with us, sir.

14 JUDGE STEINBERG: Yes.

15 THE WITNESS: In fact, it was probably the first
16 check that I wrote out of the checkbook.

17 MR. DE JESUS: Okay.

18 THE WITNESS: Check 101, I think. It would have
19 been March or April of that year.

20 BY MR. DE JESUS:

21 Q March or April of that year?

22 A Yes.

23 (Pause.)

24 BY MR. DE JESUS:

25 Q Now, can you share with us what your

1 responsibilities are with Alee?

2 A Yes. I am a member of the executive committee,
3 and my specific responsibilities on the executive committee
4 are that of the financial affairs and the operations.

5 Q Do you also receive financial reports from Altell?

6 A Yes, sir.

7 Q How often do you receive reports from Altell?

8 A We were receiving them monthly. They are now on a
9 quarterly basis.

10 Q And what do you do when you receive those reports?

11 A I analyze them from top to bottom, looking at all
12 revenues and expenses, assets, liabilities, to make sure
13 that everything is in line based upon discussions that I
14 have had with them previously.

15 Q Okay. Now, with reference to the site in New
16 Mexico 3, who built the site?

17 JUDGE STEINBERG: When you say the "site," you
18 mean the system.

19 BY MU. DE JESUS:

20 Q The system, who built the cellular system?

21 A The cellular system?

22 Q Yes.

23 A Initially, we had entered into a management
24 agreement with Metro Mobil. Subsequently, Metro Mobile was
25 taken out by Bell Atlantic. So Metro Mobile started to

1 construct the system. The system was concluded by Bell
2 Atlantic.

3 Q Okay. And is Bill Atlantic still in charge of the
4 management agreement? Are they responsible for their end of
5 the management agreement?

6 A No. The management agreement was assigned to
7 Altell on or about April 1 of 2000.

8 Q Does Alee provide any cellular service outright?

9 A Can you please explain your question, sir?

10 Q Does Alee provide any cellular -- does it run any
11 part of the system?

12 A We have engaged Altell currently to manage the
13 system for us.

14 Q Okay. So your response would be then that Altell
15 runs the system for you?

16 A We have engaged Altell to manage the system for
17 us, yes.

18 Q Okay. And can you describe what the
19 responsibilities and the duties are that Altell pursues for
20 you? In other words, what do they do for you?

21 They say they run the system. What is it they do
22 when they run the system?

23 A They initially engineered the system. They make
24 sure that the system is fully operations. They maintain the
25 system so that the services are being available 24 hours a

1 day/365.

2 Q Okay. Who owns the equipment?

- 3 A Aleo owns the equipment.

4 Q Okay. And with reference to the sites, who would
5 own the sites?

6 A The cell sites?

7 Q The cell sites.

8 A The actual cell sites, various owners.

9 Q Which are the ones you own, Aleo?

10 A Well, we have land leases on several sites, and we
11 have constructed towers on those sites that we have land
12 leases thereon. Okay? We are also co-located on other
13 sites.

14 Q Is it safe to say that on those sites where you
15 constructed towers, you own those towers?

16 A Yes, sir.

17 Q Now, have you had occasion to go to New Mexico and
18 visit any of these sites, any of these towers, any of the
19 real estate that you have your towers located on?

20 A Yes, I did.

21 Q Okay. Now, with reference to these towers, do you
22 have any access to these towers?

23 A Absolutely unfettered.

24 Q Okay. And by unfettered, is there a chain-link
25 fence or something that you have to go by or can you go

1 directly onto the site?

2 A Well, in order for us to go to the site, we would
- 3 typically contact in this case Altell. In the past, it was
4 Bell Atlantic. Notify them that we are coming out to be
5 available for our visitation, and they would do whatever we
6 ask them to do.

7 Q Okay. So is it safe to say that the keys and the
8 locks, would you have access to the keys or do have to get
9 the keys from Bell Atlantic?

10 A Well, I don't have the keys, but I would contact
11 Bell Atlantic, or in this case currently, Altell, and have
12 them have a person available for me to go do what I wish to
13 at any of the sites.

- 14 Q Now, who controls the daily operations of the
15 system? Is that you, or is that Alee, or would that be
16 Altell?

17 A Alee is ultimately responsible for it, but our
18 manager would be operating the site on a daily basis.

19 Q Okay, again, the manager being Altell?

20 A Altell.

21 Q Now, with reference to determining site
22 amplification if you want to increase or boost the power at
23 a particular site for coverage purposes, who is responsible
- 24 for making those determinations?

25 A Well, in the past what has happened is Altell or

1 Bell Atlantic has contacted us and told us that the activity
2 levels have increased and are reaching capacity. We would
- 3 then discuss potential alternatives, and Alee would make the
4 ultimate decision as to what would happen on a going forward
5 basis, review costs, et cetera.

6 Q Have there been occasions where Alee has decided
7 not to accept Metro Mobil, Bell Atlantic or Altell's
8 recommendation?

9 A Absolutely.

10 Q Okay. And when was this?

11 A Oh, I'm going to say in about the past 12 - 14
12 months. They wanted to beef up, I believe, the Los Lunus
13 site to a 4812 from its existing unit. And at the time we
- 14 reviewed costs with them and told them that we didn't want
15 to do it at this time.

16 Q Now when you get an electric bill or, I guess, for
17 the transmitter site and the power that's generated from
18 that, who generally pays those bills?

19 A We have asked Altell to take care of those
20 expenditures, and they maintain an account for us.

21 Q Okay. Would that also be true of the real estate
22 taxes associated with some of these sites?

23 A We have responsibility for real estate taxes, and
- 24 they are asked to make sure that those real estate tax bills
25 are also paid timely. \

1 Q So is it safe to say that Altell pays all the
2 bills?

- 3 A Those expenses that are incurred in the New Mexico
4 site, they would, in turn, be asked to pay for out of the
5 proceeds that they have from the fees that have been
6 collected for us.

7 Q Okay. What expenses do you pay in New Mexico?

8 A We pay our operating costs that we have in the way
9 of our legal counsel for that area. We have accountants in
10 New Mexico, expenses of that nature, and of course, cost of
11 maintaining records here.

12 Q Okay. A quick question. I know you are an
13 accountant, CPA; isn't that true?

- 14 A Yes, sir.

15 Q Okay. Why do you have accountants in New Mexico?

16 A Because the New Mexico tax law differs from the
17 tax law that I am familiar with in my state.

18 Q Okay. Are these accountants, are they retained
19 the entire year or are they just retained for purposes of
20 tax preparation?

21 A They are on an as-needed basis as well as our
22 attorneys out there.

23 Q Okay. And who are the accountants out there?
- 24 What is the name of the firm?

25 A I don't have that off the top of my head right

1 now.

2 Q Okay. Mr. Jones, could you describe Alee's
- 3 customer base, how that works in New Mexico?

4 A Alee is currently providing roamer traffic, okay,
5 servicing roamer traffic, simply because our license has
6 been revoked, and it would be unfair to have a customer base
7 when I am not going to a license in the near future.

8 Our intent, of course, was to have retail
9 customers.

10 Q Now, I would like to draw your attention to a
11 renewal license that was filed in 2000.

12 A Okay.

13 Q Did you have occasion to review that license
14 before it was filed?

15 JUDGE STEINBERG: You mean the application?

16 MR. DE JESUS: I'm sorry.

17 BY MR. DE JESUS:

18 Q That application.

19 A Yes, I believe so.

20 Q Sir, I will show you what's been marked as
21 Enforcement Bureau Exhibit No. 26.

22 JUDGE STEINBERG: It hasn't been identified yet.

23 BY MR. DE JESUS:

24 Q I ask if you can identify what this is, sir.

25 MR. HILL: Your Honor, could I ask counsel to

1 provide us with a copy of it.

2 JUDGE STEINBERG: It's not in your book?

- 3 MR. HILL: No, it's not in the book.

4 JUDGE STEINBERG: Oh, okay.

5 MS. LANCASTER: Here is a copy.

6 JUDGE STEINBERG: Okay, so I get one too. Thank
7 you. I just want one with your notes on.

8 MR. HILL: It's Bureau No?

9 MR. DE JESUS: Twenty-six.

10 JUDGE STEINBERG: Let me identify this. It's a
11 four-page document on the letterhead of Drinker, D-R-I-N-K-
12 E-R, Biddle, B-I-D-D-L-E, and Reath, R-E-A-T-H, LLP.

13 Who is John Bankston?

14 I guess it's -- it is signed by -- it's a one-page
15 letter to the secretary of the FCC with, I guess, a three-
16 page application attached. So we will call it October 10,
17 2000, letter and application; catchy name. October 10,
18 2000. And that's marked for identification as Enforcement
19 Bureau Exhibit 26.

20 (The document referred to was
21 marked for identification as
22 EB Exhibit No. 26.)

23 THE WITNESS: Yes, sir.

- 24 BY MR. DE JESUS:

25 Q Do you recognize what it is, sir?

1 A Yes.

2 Q Okay. What is it, sir?

- 3 A This is the application for renewal.

4 MR. DE JESUS: At this point I would like to move
5 that exhibit into evidence.

6 JUDGE STEINBERG: Any objection?

7 MR. EVANS: I actually --

8 MR. HILL: No objection.

9 MR. HILL: -- have an objection that's more a
10 clarification because I had intended to offer that same
11 application. The copy I have of it has all the attachments.
12 And I think just for purposes of the record to be complete,
13 we should have all the attachments.

- 14 JUDGE STEINBERG: I don't disagree with that. Do
15 you want to substitute the appropriate number of copies, Mr.
16 Evans?

17 MR. EVANS: Yes, Your Honor.

18 JUDGE STEINBERG: Okay.

19 MR. EVANS: Just to explain. If you look at the
20 last page of the form of the application, it says
21 "Attachment list," and there is three attachments that are
22 listed. The first attachment is the October 10th letter
23 that was appended to the front page of their Exhibit 26, and
24 there is to other pages that are, I believe, attachments to
25 the application. So I think we should have them included.

1 So what I would like to do is substitute the
2 complete exhibit for the one that's been given to the
- 3 witness.

4 JUDGE STEINBERG: Okay.

5 MR. EVANS: We have extra copies.

6 JUDGE STEINBERG: And then we will show that --
7 hand that to me, Mr. Jones. Thank you.

8 MR. HILL: I would like to clarify. I have no
9 objection subject to seeing that it is as Mr. Evans has
10 represented it to be.

11 THE WITNESS: I apologize for my cough drops, sir.
12 I'm not feeling well.

13 JUDGE STEINBERG: Oh, don't apologize for the
14 cough drops. I am enjoying the scent.

15 THE WITNESS: Well, some people --

16 JUDGE STEINBERG: Wild cherry.

17 THE WITNESS: Some people get offended by it.

18 JUDGE STEINBERG: Not me.

19 THE WITNESS: Suffering from a sinus infection.

20 JUDGE STEINBERG: They are not any fun.

21 MR. EVANS: It's Enforcement Bureau Exhibit 26.

22 JUDGE STEINBERG: We will just rename it and leave
23 off the part about the letter, and we will just call it
- 24 October 10, 2000, renewal application, and it becomes --

25 MR. EVANS: It should be September 8. See up in

1 the right-hand, top right-hand corner?

2 JUDGE STEINBERG: Oh, okay. I was looking at the
- 3 secretary's stamp on Mr. Bankston's letter. How does an
4 October 10th letter get attached to something submitted a
5 month earlier?

6 MR. EVANS: As you can see, he says, "I have
7 submitted additional information" at the beginning.

8 JUDGE STEINBERG: Okay. So let me start again.
9 We have an eight-page document, the previous exhibit that
10 was marked for identification as Enforcement Bureau Exhibit
11 26 is withdrawn, so we have a new exhibit which is eight
12 pages long, and it's the renewal application, FCC Form 601,
13 submitted September 8, 2000, including the three
14 attachments, and that's marked for identification as
15 Enforcement Bureau Exhibit 26.

16 (The document referred to was
17 marked for identification as
18 EB Exhibit No. 26.)

19 JUDGE STEINBERG: And the witness is looking at
20 it, and what was the question?

21 BY MR. DE JESUS:

22 Q My question is, is that an item that you are
23 familiar with and have had time to review it?

- 24 A I remember seeing it in the past, so yes.

25 Q There is a law firm that's identified there. Can

1 you -- do you recognize that name, sir? That would be about
2 the last page.

3 A Towards the last page of the application or the
4 last page of our documents?

5 Q Last page of the document. If it's not the last
6 page, it's the next to the last page.

7 A On the letter, sir?

8 JUDGE STEINBERG: Yes, Drinker, Biddle and Reath.

9 THE WITNESS: Drinker, Biddle and Reath?

10 JUDGE STEINBERG: Yes.

11 THE WITNESS: Is that what you are referring to?

12 MR. DE JESUS: Yes.

13 BY MR. DE JESUS:

14 Q Do you recognize that law firm?

15 A Yes.

16 Q And what's the relationship of that law firm to
17 Alee?

18 A That is the law firm that represents New Mexico 3
19 for Alee.

20 Q And is this the law firm that Alee hired -- you
21 engaged for the purposes of representation before the
22 Federal Communications Commission?

23 A Yes, sir. This **is** the firm that ultimately, we
24 started with Hopkins & Sutter. Hopkins & Sutter was, I
25 believe, absorbed into Drinker, Biddle and Reath.

1 Q Okay. So how long has this law firm been
2 representing you and its various incarnations?

- 3 A Since the date that we talked about earlier,
4 January of '90.

5 MR. DE JESUS: Your Honor, at this point I would
6 like to move this exhibit into evidence.

7 MR. HILL: No objection.

8 JUDGE STEINBERG: Bureau Exhibit 26 is received.

9 (The document referred to,
10 previously identified as EB
11 Exhibit No. 26, was received
12 in evidence.)

13 BY MR. DE JESUS:

- 14 Q Now, sir, I would like to call your attention to
15 page 2 of that document, question 45, which is the basic
16 qualifications question. And if I may read it, it says,
17 "Has the applicant or any party to this application or
18 amendment had any FCC station authorization, license or
19 construction permit revoked or had any applications for an
20 initial modification or renewal of **FCC** station
21 authorization, license, construction permit denied by the
22 Commission?"

23 Now, there **is** no response there, correct?

24 A Correct.

25 Q Now do you know why there is no response, sir?

1 A I believe that our license was still being
2 contested at that time, and that a further explanation was
- 3 necessary, which is why the letter was submitted in
4 conjunction with this.

5 JUDGE STEINBERG: Okay, let me ask a silly
6 question. I don't see any response to anything, to any
7 question on page 2.

8 MR. HILL: Good point.

9 JUDGE STEINBERG: Only questions 40 through 48 has
10 brackets for yes and no brackets for no, and yes and no seem
11 to be underlined but there is no response to any of those
12 questions.

13 MR. HILL: Your Honor, I could speak to that. But
14 in light of the admonition from Ms. Lancaster earlier, the
15 witness can step out of the room.

16 THE WITNESS: Would you like me to leave?

17 MR. HILL: If no objections, and in light of her
18 concerns.

19 JUDGE STEINBERG: Okay. So this, by this, EB
20 Exhibit 26 came from an official Commission source, like a
21 database?

22 MR. DE JESUS: I'm sorry, what was your question.

23 JUDGE STEINBERG: Well, Ms. Lancaster answered
24 yes, if Exhibit 26 came from an official Commission source
25 like a database.

1 MS. LANCASTER: Our copy did, so I assume his copy
2 did.

3 MR. HILL: I have no quarrel with that. It says
4 "Print preview."

5 JUDGE STEINBERG: Right.

6 MR. HILL: And I have seen this, and you can pull
7 it off on your computer, I can. This is an electronic
8 filing, and I don't know all of, you know, the intricacies
9 of electronic filings, but I know that when you pick certain
10 categories certain items don't have to be or can't be
11 answered in this electronic filing process, and that's why
12 we see some blanks.

13 And Ms. Rasmussen knows more about electronic
14 filings than I do, and I'm not going to try to embarrass
15 myself.

16 JUDGE STEINBERG: Well, I see questions 38 and 39,
17 there is an "N" typed in the brackets.

18 MR. HILL: That's the electronic -- that's how you
19 enter that on your electronic filing. It's "N" for "no".

20 MS. RASMUSSEN: When you file a renewal, the form
21 comes up, and it just asks you about exemptions.

22 JUDGE STEINBERG: Okay, hold on a second. You
23 have go to a microphones.

24 MS. RASMUSSEN: When you file for --

25 JUDGE STEINBERG: Wait.

1 MS. LANCASTER: Before you give an explanation,
2 may I ask a question? I know this is not my witness, but is
- 3 this going to be counted as testimony on the record?

4 JUDGE STEINBERG: No.

5 MS. LANCASTER: We have counsel testifying again
6 at this point.

7 JUDGE STEINBERG: Well, I think he is trying to --
8 well, it's not testimony. It's not going to wind up in the
9 findings.

10 MR. HILL: We are confused about this form, and I
11 just want to point out that some of the problems on
12 electronic filing with the FCC.

13 JUDGE STEINBERG: Well, you know, I am very
14 curious, but on the other hand, it is counsel sort of trying
15 to testify, and what we have now is Enforcement Bureau
16 Exhibit 26 and a question about 45, and why wasn't this
17 answered. We actually have an answer as to why it wasn't
18 answered. And then I stuck my nose into it. So why don't
19 we leave it like that. And if other witnesses want to
20 explain it, I mean, it's an electronic filing and there
21 really is no hard copy.

22 MR. HILL: Well, if you generate this --

23 JUDGE STEINBERG: No, I mean there is no hard copy
- 24 that Mr. Bankston would have walked in and filed.

25 MR. HILL: That's correct.

1 JUDGE STEINBERG: Okay. So we have got a question
2 and an answer.

- 3 MR. DE JESUS: Your Honor, if I may?

4 JUDGE STEINBERG: Yes.

5 MR. DE JESUS: What I would like is to have the
6 reporter repeat Mr. Jones' last response.

7 (Accordingly, the record was played back
8 by the court reporter.)

9 BY MR. DE JESUS:

10 Q It's your position that since the license was
11 being contested that you didn't have to share this
12 information with us, and you didn't have to answer yes?

13 A I think that the information was shared with you,
14 but it was felt that a clearer response was more appropriate
15 than an answer because the answer is not clearly either yes
16 or not, but it's still being contested.

17 Q So where in the letter do you provide a clearer
18 response? Where in the letter dated October 10, 2000, is a
19 clearer response provided?

20 JUDGE STEINBERG: Or any other letter.

21 BY MR. DE JESUS:

22 Q Or any other letter?

23 A Or any other letter?

24 I believe that in the second paragraph of the
25 letter from Drinker, Biddle & Reath it states that they did

1 not have -- has not had the opportunity to respond to
2 question 45, and in abundance **of** caution they are submitting
3 this letter. In response thereto, the applicant refers to
4 the Commission docket. It's the second paragraph of the
5 letter.

6 Q In that letter why doesn't it say, response, yes,
7 and then elaborate? It just provides a notation and a
8 reference. It doesn't respond to the question. It just
9 provides some secondary cite that the Commission is supposed
10 to go to

11 MR. HILL: Your Honor, I have to object. This is
12 argumentative. The document has been introduced into
13 evidence and it speaks for itself.

14 JUDGE STEINBERG: It's sustained

15 BY MR. **DE** JESUS:

16 Q Question: Where in the letter does it say "yes"
17 with reference to question 45?

18 A I don't think it say "yes" or "no," but rather
19 that there are open appeals on the issue in the U.S. Court
20 of Appeals.

21 Q Does the letter mention anything about the license
22 being revoked?

23 A It states that we are an appellant.

24 Q But it doesn't describe the nature of the appeal,
25 correct, the letter doesn't describe it?

1 A It doesn't go into the details of the appeal. It
2 refers to a docket number and a case number.

- 3 Q Did the letter then attach any subsequent Court of
4 Appeals decision or any documentation from the Court of
5 Appeals elaborating on what the nature of the appeal was?

6 A If this is all the documentation that you provided
7 to me, and you say that this is the complete filing, then I
8 don't see anything further attached to it.

9 Q **Now**, did you have occasion to review this item
10 before it was filed? Did you get a copy of this?

11 A I believe that I had a copy of the initial form,
12 and I received a copy of the letter as well subsequently.

13 JUDGE STEINBERG: The October 10 letter?

14 THE WITNESS: Yes, sir.

15 BY MR. DE JESUS:

16 Q Was that before or after the letter was filed?

17 A I'm sorry?

18 Q Was that before or after the letter was filed that
19 you got a copy?

20 A I don't recall.

21 Q But you recognize it? You are responsible for all
22 matter filed before the Commission; isn't that true?

23 A My name is on the application, sir. **All** right,
24 which is based upon an internet transaction is equivalent to
25 my signature.

1 Q Correct. And this is not something that can be
2 delegated to someone else; isn't that true, sir?

- 3 A When you can it cannot be delegated to someone
4 else?

5 Q Filing an application before the Commission --

6 A Yes.

7 Q -- has to be filed by a party -- by a licensee.

8 MR. HILL: This is a misrepresentation of the
9 facts. I can file an application.

10 JUDGE STEINBERG: Why don't you rephrase it.

11 Objection is sustained.

12 MR. DE JESUS: Okay.

13 BY MR. DE JESUS:

14 Q You're still responsible for anything that's filed
15 before the Commission; isn't that right?

16 A That is correct, sir.

17 Q Now, you testified earlier that you're responsible
18 for monitoring anything that goes on in New Mexico 3. If I
19 am a user of your system, a roamer, and I have a complaint,
20 do I contact you or do I contact Altell?

21 A Well, if you were roaming and you had a complaint,
22 I would imagine you would contact your provider. Your
23 provider would then probably contact Altell, and Altell
24 would contact me.

25 Q Okay, and in the years that you had a relationship

1 with Metro Mobile, Bell Atlantic and Altell, how many
2 complaints have you gotten from the public concerning the
- 3 use of your systems? Have you gotten any complaints?

4 A To my knowledge, we have not received any
5 complaints.

6 Q Is that because you haven't gotten any complaints
7 from the public or you haven't been informed by Altell and
8 the managers who run the system for you?

9 A I can't answer directly from the public, but I can
10 answer directly from the manager's of the system. I have
11 not received any complaints from them concerning complaints
12 that they received.

13 Q Do you have any procedures in place where the
- 14 managers of the system are required to inform you of any of
15 these complaints? Do you have any written instructions to
16 them?

17 A No formal written instructions. Verbal
18 discussions as to how the system is working and whether
19 there are any problems with the system.

20 MR. DE JESUS: Bear with me.

21 (Pause.)

22 JUDGE STEINBERG: If you are changing subject, we
23 will break for the day. But if you are going to stick on
- 24 this then --

25 MR. DE JESUS: This is fine, Your Honor.

1 JUDGE STEINBERG: Okay. How about nine o'clock?

2 We will break for today and come back at nine tomorrow? Is

- 3 that agreeable with everybody?

4 MR. DE JESUS: Yes.

5 JUDGE STEINBERG: Okay, then we will be in recess

6 until nine o'clock. Thank you.

7 (Whereupon, at 4:04 p.m., the hearing in the

8 above-entitled matter was adjourned until Wednesday, October

9 23, 2002 at 9:00 a.m.)

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1 REPORTER'S CERTIFICATE

2
3 DOCKET NO.: *WT02-28*
4 CASE TITLE: *Alee Cellular*
5 HEARING DATE: *10/22/02*
6 LOCATION: *445 12th St. SW*
7

8 I hereby certify that the proceedings and evidence are
9 contained fully and accurately on the tapes and notes
10 reported by me at the hearing in the above case before the
11 *FCC*
12

13
14 Date: *10/22/02*

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